

DOCKET FILE COPY ORIGINAL

ORIGINAL

ANNE GOODWIN CRUMP\*  
VINCENT J. CURTIS, JR.  
THOMAS J. DOUGHERTY, JR.  
JAMES G. ENNIS  
PAUL J. FELDMAN\*  
RICHARD HILDRETH  
EDWARD W. HUMMERS, JR.  
FRANK R. JAZZO  
BARRY LAMBERGMAN  
PATRICIA A. MAHONEY  
GEORGE PETRUTSAS  
LEONARD R. RAISH  
JAMES P. RILEY  
MARVIN ROSENBERG  
LONNA M. THOMPSON  
KATHLEEN VICTORY\*  
HOWARD M. WEISS

\*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209

P. O. BOX 33847

WASHINGTON, D.C. 20033-0847

(703) 812-0400 • (202) 828-5700

TELECOPIER

(703) 812-0486 • (202) 828-5786

June 4, 1993

PAUL D.P. SPEARMAN  
(1936-1982)  
FRANK ROBERSON  
(1936-1981)

RETIRED  
RUSSELL ROWELL  
EDWARD F. KENEHAN  
ROBERT L. HEALD  
FRANK U. FLETCHER

OF COUNSEL  
EDWARD A. CAINE

TELECOMMUNICATIONS CONSULTANT  
HON. ROBERT E. LEE

WRITER'S NUMBER  
(703) 812- 0415

VIA HAND DELIVERY

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, Room 222

RECEIVED

JUN - 4 1993

FEDERAL COMMUNICATIONS COMMISSION

RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUN - 4 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. 93-26
	)	
STEVEN L. GRADICK	)	File No. BPH-911031MD
	)	
TERRY C. JENKS	)	File No. BPH-911031MF

For Construction Permit for a  
New FM Station on Channel 288A  
in Bowdon, Georgia

To: The Honorable Richard L. Sippel  
Administrative Law Judge

**SETTLEMENT STATUS REPORT AND  
JOINT MOTION FOR IMMEDIATE SUSPENSION OF PROCEDURAL DATES**

Steven L. Gradick ("Gradick") and Terry C. Jenks ("Jenks"), by their attorneys, jointly report on the status of their settlement and petition the Presiding Judge to suspend immediately the procedural dates in the above-captioned proceeding. In support whereof, the following is submitted:

As the Presiding Judge has been advised, Gradick and Jenks have reached a settlement agreement in principle. That agreement, which has been reduced to a written Settlement Agreement that has not yet been executed, provides for the dismissal of Jenks's application in exchange for partial reimbursement of expenses incurred by Mr. Jenks in connection with his application for a new FM station in Bowdon, Georgia. Jenks and Gradick have agreed to execute declarations in which Jenks will demonstrate that he will not receive consideration in excess of his legitimate and prudent expenses and will declare that his application has been prosecuted in good faith and not for the purpose of entering into a settlement

agreement, and both parties will declare that: (1) no consideration other than as set forth in the Settlement Agreement has been promised or paid to Jenks; and (2) the public interest would be served by conservation of the resources of the parties and the Commission and the more expeditious initiation of service to Bowdon, Georgia.

There are no unresolved issues concerning the Gradick application. The radiofrequency hazard issue was resolved by Order, FCC 937-131, dated March 31, 1993. There is, however, one obstacle to a grant of either Gradick's or Jenks's application in this proceeding: the two pending petitions for reconsideration of the allotment of Channel 288A to Bowdon, Georgia, in the Report and Order in MM Docket No. 90-309, DA 91-987 (Chief, Allocations Branch, released August 14, 1991). See Attachment 1 hereto. The two pending petitions for reconsideration were filed almost two years ago. They were filed by Design Media, Inc. (Design), the licensee of station WQUL(FM), which operates on Channel 249A at Griffin, Georgia, and Alexander Mitchell Communications Corporation (AMCC), at that time the licensee of station WSKS(FM), Channel 249A at Sparta, Georgia. See Attachment 2 hereto.

Counsel for the Mass Media Bureau has advised the undersigned counsel that, as long as Docket 90-309 remains open and there is a possibility that the allotment of Channel 288A to Bowdon could be deleted, the Mass Media Bureau would not issue a construction permit to the prevailing applicant in this proceeding. In other words, if an Initial Decision were released today or an order approving a settlement agreement were released today, the applicant

who received the "grant" would not receive a construction permit and could not commence construction. The possibility would remain that the channel could be deleted through the open rulemaking proceeding. Thus, while the parties here have agreed to settle and are willing to settle, and Gradick is willing and prepared to commence construction, the Commission is not ready to issue a construction permit for reasons unrelated to this proceeding and unrelated to the applicants in this proceeding.

The undersigned counsel have been advised by Mass Media Bureau staff that what is holding up action on the two petitions for reconsideration in the Bowdon allotment proceeding (MM 90-309) is a separate rulemaking proceeding, MM Docket No. 92-227, that was commenced by Design and Good Medicine Radio, Georgia, Inc. (GMRG), which purchased WSKS(FM), from AMCC, subsequent to the filing of the petitions for reconsideration in MM 90-309. See Attachment 3 hereto. It is Gradick's and Jenks's understanding that, while that second proceeding does not involve Channel 288A at Bowdon, or any proposal that is technically in conflict with the Bowdon allotment, the staff is treating the two proceedings together because, if the proposals advanced by Design and GMRG in MM Docket 92-227 are adopted, which would permit them to upgrade WQUL(FM) and WSKS(FM), the petitions for reconsideration in the Bowdon allotment proceeding (through which the licensees of those stations

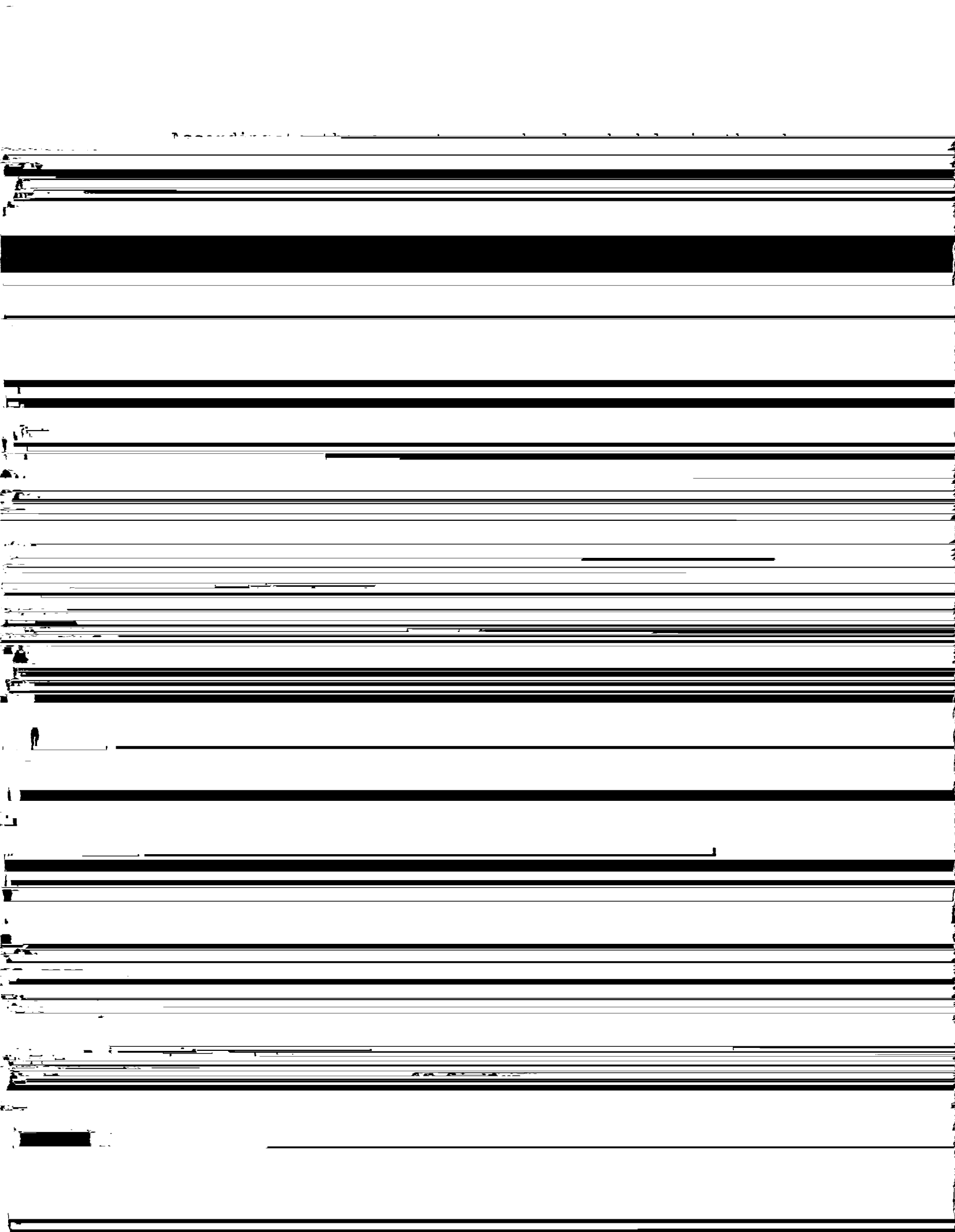
originally sought to upgrade WQUL(FM) and WSKS(FM)) will be moot.<sup>1</sup>

Although the proposals advanced by Design and GMRG in MM Docket 92-227 are technically inconsistent with the pending petitions for reconsideration, Design and GMRG have not yet withdrawn their petitions for reconsideration and are apparently unwilling to do so until a Report and Order is issued in MM 92-227. However, counsel for Design and GMRG in MM Docket 92-227 has indicated to the undersigned that he has been advised that a Report and Order will shortly be forthcoming (probably within the next two weeks) in MM Docket 92-227.

While there is any possibility that the allotment to Bowdon could be deleted, the parties are unable to finalize settlement. Dismissal of Jenks's application is contingent on grant of Gradick's application and Gradick's agreement to reimburse Jenks. Gradick will not agree to reimburse Jenks if he has no assurance that he will obtain a construction permit. Jenks is willing and prepared to execute the settlement documents at this time. Gradick is willing and prepared to execute the settlement documents if and when the petitions for reconsideration in MM 90-309 are withdrawn or dismissed as moot.

---

<sup>1</sup>It would appear that the petitions for reconsideration in the Bowdon proceeding (MM 90-309) should have been dismissed as moot when the Notice of Proposed Rulemaking in MM Docket No. 92-227 was issued, since the proposals Design and AMCC advanced to upgrade WQUL(FM) and WSKS(FM) in the Bowdon proceeding are inconsistent with the proposals subsequently advanced to upgrade the stations in MM Docket No. 92-227.



Moreover, as long as there is a possibility that the allotment to Bowdon could be deleted, the public interest is not served by requiring the Commission to expend resources conducting a hearing for a facility that may never be authorized and requiring applicants to expend resources pursuing an authorization for a facility that may never be able to be built.

Counsel for the Mass Media Bureau has been advised of this Motion and has authorized the undersigned to state that the Bureau will interpose no objection.

Good cause clearly exists for grant of this Motion.

For the foregoing reasons, it is respectfully requested that

Moreover, as long as there is a possibility that the allotment to Bowdon could be deleted, the public interest is not served by requiring the Commission to expend resources conducting a hearing for a facility that may never be authorized and requiring applicants to expend resources pursuing an authorization for a facility that may never be able to be built.

Counsel for the Mass Media Bureau has been advised of this Motion and has authorized the undersigned to state that the Bureau will interpose no objection.

Good cause clearly exists for grant of this Motion.

For the foregoing reasons, it is respectfully requested that all procedural dates in the above-captioned proceeding be immediately suspended.

Respectfully submitted,

**TERRY C. JENKS**

By:

\_\_\_\_\_  
Patricia A. Mahoney  
Kathleen Victory  
His Attorneys  
Fletcher, Heald & Hildreth  
1300 North 17th Street, 11th Floor  
Rosslyn, VA 22209  
(703) 812-0400

**STEVEN L. GRADICK**

By:

\_\_\_\_\_  
David L. Hill  
Audrey P. Rasmussen  
His Attorneys  
O'Connor & Hannan  
1919 Pennsylvania Ave., N.W., Ste. 800  
Washington, D.C. 20006  
(202) 887-1400

Dated: June 4, 1993



**ATTACHMENT 1**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 90-309

In the Matter of

Amendment of Section 73.202(b),	RM-7097
Table of Allotments,	RM-7310
FM Broadcast Stations.	RM-7488
(Bowdon, Griffin, Hogansville, and Sparta, Georgia) <sup>1</sup>	

**REPORT AND ORDER**  
(Proceeding Terminated)

Adopted: August 2, 1991;

Released: August 14, 1991

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 3769 (1990), issued in response to two interrelated petitions for rule making. They both require the substitution of Channel 288A for Channel 248A at Hogansville, Georgia. Design Media, Inc. ("DMI"), licensee of Station WQUL(FM),<sup>2</sup> Channel 249A, Griffin, Georgia, requested the substitution of Channel 248C3 for Channel 249A, and the modification of Station WQUL(FM)'s license to specify the higher class channel. In order to accomplish the upgrade at Griffin, DMI also requests the substitution of Channel 288A for Channel 248A at Hogansville, Georgia (RM-7097).<sup>3</sup> Alexander Mitchell Communications Corporation ("AMCC"), licensee of Station WSKS(FM), Channel 249A, Sparta, Georgia, seeks the substitution of Channel 249C3 for Channel 249A at Sparta, and modification of the license for Station WSKS to specify operation on Channel 249C3. The upgrade at Sparta also requires the substitution of Channel 248C3 for Channel 249A at Griffin, Georgia, and the substitution of Channel 288A for Channel 248A at Hogansville, Georgia (RM-7310). AMCC and DMI filed comments restating their intentions to apply for the respective channels, if allotted. Info-Air, Inc. ("Info-Air"), an applicant for Channel 248A at Hogansville, Georgia, filed opposing comments.<sup>4</sup> Terry C. Jenks and Bowdon Broadcasters, Inc. ("Bowdon") filed

comments and counterproposals (RM-7488).<sup>5</sup> AMCC, Bowdon, and DMI filed reply comments. AMCC and DMI filed comments in response to the counterproposals. After the close of the record DMI filed a request for leave to file supplemental reply comments. Bowdon filed a request for withdrawal of its counterproposal.<sup>6</sup> Jenks filed a request for leave to file response to supplemental comments and filed supplemental comments. DMI filed an opposition to Jenks' request for leave to file response. T. Wood and Associates, Inc. ("Wood"), permittee of Channel 248A at Hogansville, Georgia, filed a request for expedited action in this proceeding.<sup>7</sup>

2. In its counterproposal Jenks requested the allotment of Channel 288A to Bowdon, Georgia, as that community's first local service, rather than the substitution of Channel 248C3 at Griffin and the substitution of Channel 249C3 at Sparta. Jenks states that Bowdon is an incorporated city with a population of 1,743<sup>8</sup> people and currently has no local radio station. Jenks contends that the allotment of Channel 288A to Bowdon as a first local service is superior to the upgrades at Griffin and Sparta. Jenks states his intention to apply for Channel 288A at Bowdon, if allotted.

3. In its reply comments, AMCC argues that the timing of the counterproposal raises the question of economic or competitive benefit to be derived from blocking this proposal, and the good faith of Jenks. AMCC notes that Jenks has not provided any indication of interest in the Bowdon allotment. AMCC further states that while Bowdon is currently without a local broadcast service, Jenks has not provided information to demonstrate that Bowdon is actually in need of any service. Jenks has not addressed whether Bowdon is self governing, whether it provides its residents with municipal services such as police and fire protection, water and sewer service, or schools and employment. AMCC alleges that the questions become even more significant when the fact that Bowdon is located on the edge of the Atlanta urbanized area is considered. In this regard, AMCC states that the Commission should consider whether the Huntington doctrine should be applied to the Bowdon proposal. See *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951). The doctrine provides an exception to the Commission's policy of awarding a first local service preference in those cases in which a first local service preference is claimed for a community contiguous to a larger central city. AMCC argues that because of Bowdon's proximity to Atlanta and its location on the edge of the Atlanta urbanized area, Bowdon should be denied the first local service preference that Jenks seeks, citing *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988), and *Bessemer and Tuscaloosa, Alabama*, 5 FCC 669 (1990).

<sup>1</sup> The community of Bowdon has been added to the caption.

<sup>2</sup> Effective September 3, 1990, the call letters of Station WKEU(FM) were changed to WQUL(FM).

<sup>3</sup> T. Wood and Associates, Inc. ("Wood"), became the ultimate permittee for Channel 248A, Hogansville, Georgia, by *Memorandum Opinion and Order*, MM Docket No. 90-52, February 28, 1991. The grant was conditioned on the outcome of this rule making proceeding.

<sup>4</sup> We find that Info-Air's comments are moot due to the fact that its application has been dismissed. Therefore, any comments responsive thereto will not be discussed.

<sup>5</sup> Public Notice of the Bowdon counterproposal was given September 5, 1990, Report No. 1825, (RM-7488). Terry C. Jenks'

counterproposal was not put on public notice; however, it has been accepted as comments in support of Bowdon's proposal, since both proposals requested the allotment of Channel 288A to Bowdon, Georgia, as that community's first local FM service.

<sup>6</sup> On October 3, 1990, Bowdon requested withdrawal of its counterproposal. Although Bowdon has withdrawn its interest in the allotment of Channel 288A at Bowdon, Jenks filed a timely filed expression of interest and it will be considered.

<sup>7</sup> The Commission's Rules do not contemplate the filing of pleadings beyond the comment and reply comment periods. Therefore, in accordance with Section 1.415(d) of the Commission's Rules, we shall not accept the unauthorized pleadings.

<sup>8</sup> Population figures are taken from the 1980 U.S. Census.

4. In its reply comments to the counterproposals, AMCC argues that if both Design and AMCC are allowed to go Class C3 status, AMCC will provide service of 1.0 mV/m or greater intensity to a 137.64 square kilometer area encompassing 1,248 persons currently served by no other full time AM or FM service. AMCC contends that the boundaries of this "white area" are composed of the 0.5 mV/m contour of Station WSB(AM), Atlanta, Georgia, the present 1.0 mV/m contour of Station WSKS, Channel 249A, Sparta, Georgia, and the proposed 1.0 mV/m contour of Station WSKS(FM) on Channel 248C3. AMCC states that this white area or first full-time aural service takes precedence over Bowdon's proposal which proposes first local service.<sup>9</sup> However, in an attempt to resolve this conflict, AMCC conducted a channel search and suggested the use of Channel 223A at Bowdon as a 3 kilowatt station Class A facility.<sup>10</sup>

5. DMI, in its reply comments to the counterproposals, restates AMCC's argument that the upgrade of Station WQUL(FM) and Station WSKS(FM) will result in the provision of full-time aural service to a "white area" served by no other full-time AM or FM station. DMI contends that a white area first fulltime aural service is to be preferred over the conflicting Bowdon proposal. DMI also suggests that Channel 223A be allotted to Bowdon to resolve this conflict.<sup>11</sup>

6. We have carefully reviewed the record in this proceeding and have determined that there is no other channel available to resolve the conflict between the proposed upgrades for the Griffin and Sparta, Georgia, stations on the one hand and the proposed new allotment for Bowdon, Georgia, on the other hand. Thus, we must choose between the conflicting proposals and base our decision on the following allotment criteria as set forth in *Revision of FM Policies and Procedures*, 90 FCC 2d 88 (1982).

- (1) first full-time aural service
  - (2) second full-time aural service
  - (3) first local service; and
  - (4) other public interest matters.
- (Co-equal weight given to priorities (2) and (3).)

In applying these priorities, we note, at the outset, that DMI and AMCC's claim that the grant of the upgrade for the Sparta station would result in a first full-time aural reception service to 1,743 people is incorrect. Our engineering analysis reveals that upgrading the Sparta station would not result in any full-time reception service because the claimed "white area" would be covered entirely by the 1.0 mV/m contour of Station WSAA(FM), Channel 226A, Warrenton, Georgia, currently authorized by a construction permit, and is covered substantially by the 1.0 mV/m contour of Station WHAN(FM), Channel 274A, Sparta. These two construction permits were ignored by DMI and AMCC's "white area" study. Moreover, when these two stations are considered, the claimed area of second full-time reception service (i.e., "gray area") is reduced to a small portion of Warren County encompassing approximately 113 people. Therefore, we are called upon in this case to resolve a conflict between an upgrade proposal allotment to Bowdon that triggers priority three because Bowdon has no local aural transmission service.<sup>12</sup>

7. Although the *Revision of FM Policies* provides that priorities (2) and (3) are given co-equal weight, it also provides a mechanism for resolving a conflict between proposals raising these priorities. It states:

In cases involving a choice between such second aural and first local services, the populations provided each of those services would be compared. Preference would be given depending on whether more persons would receive a second aural service or a first local service. Under this approach we will continue to give emphasis to local service while avoiding the possibility of anomalous results under the old priorities.<sup>13</sup>

<sup>9</sup> AMCC acknowledges that its white area study disregarded the construction permit for Station WSAA(FM), Channel 226A, Warrenton, Georgia, but claims that even if this unbuilt station is considered, the proposed upgrade for Station WSKS will provide a second aural reception service (i.e., a "gray area"). AMCC contends that this triggers FM priority two and therefore warrants grant of the upgrade proposals over the new allotment at Bowdon.

<sup>10</sup> We note that an engineering analysis has determined that the proposed allotment of Channel 223A to Bowdon at the coordinates suggested by AMCC (33-38-33 and 85-17-42) would violate the minimum distance separation requirements of Section 73.207 of the Rules because of short-spacings to Station WBTR-FM, Channel 221A Carrollton, Georgia, Station WLWI-FM, Channel 222C, Montgomery, Alabama, and vacant but applied for Channel 223A, Zebulon, Georgia.

<sup>11</sup> In making this alternative proposal, DMI requests that the minimum distance separation requirements existing prior to October 2, 1989, be applied because the lead petition in this proceeding for the Griffin upgrade was filed before October 2, 1989. Since the other proposals were filed after that date, DMI believes that all proposals in this proceeding should be governed

by the same set of rules. We disagree. Since the Bowdon counterproposals were filed in August 1990, and are therefore subject to the new spacing rules, any alternative channel for Bowdon must likewise be governed by the new rules. See *Second Report and Order in MM Docket No. 88-275*, 4 FCC Rcd 6375 (1989).

<sup>12</sup> Although DMI argues that we should apply the *Huntington Doctrine* and not consider that the proposed allotment at Bowdon would result in a first local service because of Bowdon's proximity to the larger community of Atlanta, Georgia, we do not agree. First, the *Huntington Doctrine* has only been used in the context change of community of license cases or in comparative hearings involving applications, neither of which are applicable here. Second, even in those cases in which the *Huntington Doctrine* has arisen, the smaller community has been inside the urbanized area of a larger city and a showing has been made of interdependency between the smaller community and the larger urban center. In this instance, Bowdon is located approximately 50 miles from Atlanta and is not inside the Atlanta urbanized area. Furthermore, no showing of interdependency was made. See, e.g., *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>13</sup> 90 FCC 2d at 92.

In the few cases in which this conflict has arisen, we have compared the population that would receive second full-time aural service (*i.e.*, the gray area population) with the population of the community in which we would provide a first local aural transmission service.<sup>14</sup> Applying this procedure here, we note that the Sparta upgrade would provide a second full-time reception service to 113 people while the allotment of Channel 288A to Bowdon would result in a first local transmission service to a population of approximately 1,743. As a result, the Bowdon proposal is the preferred allotment under the *Revision of FM Assignment Policies*.<sup>15</sup>

8. Channel 288A can be allotted to Bowdon in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.1 kilometers (5.7 miles) southwest, in order to avoid a short-spacing to Station WCHK(FM), Channel 289C2, Canton, Georgia.<sup>16</sup>

9. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED. That effective **September 30, 1991**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Bowdon, Georgia	288A

10. The window period for filing applications will open on **October 1, 1991**, and close on **October 31, 1991**.

11. IT IS FURTHER ORDERED. That the petitions for rule making filed by Alexander Mitchell Communications Corporation (RM-7310) and Design Media, Inc. (RM-7097) ARE DENIED.

12. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

#### FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

<sup>14</sup> See, e.g., *Conway, Arkansas*, 2 FCC Rcd 6132 (1987). See also *Killington, Vermont*, MM Docket No. 83-357, Mimeo No. 6471, released August 21, 1985.

<sup>15</sup> Although DMI questions the legitimacy of Jenks' expression of interest in the allotment for Bowdon and his motives in filing his petition for rule making, we note DMI has not submitted any extrinsic evidence on this issue. On the contrary, Mr. Jenks has stated in his counterproposal that he will file an

application, if the allotment is made to Bowdon. Likewise, DMI questions whether the counterproponent has shown that Bowdon has a need for a first local service. We believe that since Bowdon is an incorporated community of 1,743 people, such a need can be presumed.

<sup>16</sup> The coordinates for Channel 288A at Bowdon are North Latitude 33-28-54 and West Longitude 85-19-34.

**ATTACHMENT 2**

FEDERAL COMMUNICATIONS COMMISSION

Record Image Processing System

PRINT JOB REQUESTED

-----  
DKT/RM NO: 90-309  
DOCUMENT: N/A  
JOB NUMBER: 3035  
REQUESTOR: rips  
WORKSTATION: fcc\_retr\_2  
TOTAL PAGES: 3  
06/04/1993 @ 11:36:08

-----  
RECORD INDEX DATA  
-----

DOCKET

Bur: MM Dkt/RM No: 90-309 Open/Closed: O Restricted: R PRE

Assoc RM: RM-7310 RM-7488

File No:

Subject: AMENDMENT TO FM TABLE OF ALLOTMENTS

Applicant/Petitioner: DESIGN MEDIA, INC.

Filed by: B. JAY BARAFF AND LEE J. PELTZMAN, ATTYS ON 09/28/89.

Location: GRIFFIN, GA

Channel: 248C3

Call Sign: Date Closed:

Appeal No:

Designation Date:

Cmsn Decn:

PN Date:

ID Date:

Docket Created: 102291

NPRM/NOI Date: 060690

OA Date:

Eff. Date: 093091

R&O Date: 080291

RB Decn:

Rules Sec: 73.202(B)

::::: \*\*\* DKT/RM: 90-309 \*\*\* :::::

06/06/90 NOTICE OF PROPOSED RULE MAKING ADOPTED BY DEPUTY CHIEF, P & R  
DIVISION; COMMENTS TO BE FILED 08/13/90, AND REPLY COMMENTS ON  
08/28/90; CONTACT PERSON: NANCY J. WALLS. (202) 634-6530.  
(DA 90-832) REL. 06/22/90 WEG  
(06/28/90 CERTIFIED MAIL RR REC'D BY B. PITBY, FOR THARPE  
COMMUNICATIONS, #97461; 06/28/90 CERTIFIED MAIL RR REC'D BY  
C.N. TARKENTON, FOR CHRISTOPHER N. TARKENTON, #97459; 06/28/90  
CERTIFIED MAIL RR REC'D BY KEITH TERNELL, FOR TFB & ASSOCIATES,  
#97460) WEG  
07/17/90 COMMENTS FILED BY LEONARD BOLTON, VICE PRESIDENT  
DESIGN MEDIA, INC. WEG  
08/08/90 COMMENTS FILED BY JOHN F. GARZIGLIA, ATTORNEY  
ALEXANDER MITCHELL COMMUNICATIONS CORPORATION. WEG  
08/09/90 COMMENTS AND COUNTERPROPOSAL FILED BY TERRY C. JENKS. WEG  
09/05/90 (THIS COUNTERPROPOSAL HAS BEEN ACCEPTED BY THE ALLOCATIONS  
BRANCH AS COMMENTS IN SUPPORT OF BOWDON BROADCASTERS 08/13/90  
COUNTERPROPOSAL. THEREFORE, IT WAS NOT PUT ON PUBLIC NOTICE.) BD  
08/13/90 COMMENTS FILED BY ROBERT G. SCOTT, JR., ATTY  
INFO-AIR, INC. WEG  
08/14/90 CERTIFICATE OF SERVICE FILED. WEG  
08/13/90 COMMENTS AND COUNTERPROPOSAL FILED BY DANIEL F. VAN HORN, ATTY  
BOWDON BROADCASTERS. WEG  
08/14/90 ERRATUM FILED. WEG  
(PUT ON PUBLIC NOTICE 09/05/90; ASSIGNED RULEMAKING #7488).  
08/28/90 REPLY COMMENTS FILED BY HOWARD J. BARR, ATTORNEY  
ALEXANDER MITCHELL COMMUNICATIONS CORPORATION. WEG  
08/28/90 REPLY COMMENTS FILED BY B. JAY BARAFF, ATTORNEY  
DESIGN MEDIA, INC. WEG  
08/28/90 REPLY COMMENTS FILED BY DANIEL F. VAN HORN, ATTORNEY  
BOWDON BROADCASTERS. WEG  
09/19/90 REPLY COMMENTS FILED BY HOWARD J. BARR, ATTORNEY  
ALEXANDER MITCHELL COMMUNICATIONS CORPORATION. WEG  
09/20/90 REPLY COMMENTS FILED BY ALAN E. ARONOWITZ, ATTORNEY  
DESIGN MEDIA, INC. WEG  
09/28/90 SUPPLEMENTAL REPLY COMMENTS FILED BY ALAN E. ARONOWITZ, ATTORNEY  
DESIGN MEDIA, INC. WEG  
10/01/90 SIGNED DECLARATION FILED. WEG  
09/28/90 REQUEST FOR LEAVE TO FILE SUPPLEMENTAL REPLY COMMENTS FILED BY  
B. JAY BARAFF, ATTORNEY  
DESIGN MEDIA, INC. WEG  
10/03/90 WITHDRAWAL OF PLEADINGS FILED BY DANIEL F. VAN HORN, ATTORNEY  
BOWDON BROADCASTERS. WEG  
10/25/90 LTR. TO SENATOR NUNN FROM CHIEF, MM BUREAU-FCC PLACED IN THE  
FILE OF THIS PROCEEDING. WEG  
12/28/90 REQUEST FOR LEAVE TO FILE RESPONSE TO SUPPLEMENTAL REPLY COMMENTS  
FILED BY PATRICIA A. MAHONEY, ATTORNEY  
TERRY C. JENKS. WEG

::::: \*\*\* DKT/RM: 90-309 \*\*\* :::::

12/28/90 RESPONSE TO SUPPLEMENTAL REPLY COMMENTS FILED BY PATRICIA A.  
MAHONEY, ATTORNEY  
TERRY C. JENKS. WEG  
01/30/91 OPPOSITION TO REQUEST FOR LEAVE TO FILE RESPONSE FILED BY ALAN E.  
ARONOWITZ, ATTORNEY  
DESIGN MEDIA, INC. WEG  
04/30/91 LTR. FROM CHIEF, MM BUREAU TO REP. GINGRICH PLACED IN THE

05/15/91 CORRESPONDENCE FILE OF THIS PROCEEDING. WEG  
REQUEST FOR EXPEDITED ACTION FILED BY LAWRENCE J. BERNARD, JR.,  
ATTORNEY  
T. WOOD AND ASSOCIATES, INC. WEG  
08/02/91 REPORT AND ORDER ADOPTED BY CHIEF, ALLOCATIONS BRANCH; THE  
RULES ARE AMENDED AS FOLLOWS:  
CITY CHANNEL NO.  
BOWDON, GA 288A  
RM-7310 AND RM-7097 ARE DENIED; PROCEEDING TERMINATED; CONTACT  
PERSON: NANCY J. WALLS, (202) 634-6530. (DA 91-987) REL.  
08/14/91 WEG  
08/06/91 LTR. FROM CHIEF, MM BUREAU TO REP. GINGRICH PLACED IN THE  
CORRESPONDENCE FILE OF THIS PROCEEDING. WEG  
09/19/91 PETN. FOR RECONSIDERATION OF DA 91-987 FILED BY HOWARD J. BARR,  
ATTORNEY  
09/19/91 ALEXANDER MITCHELL COMMUNICATIONS CORPORATION. WEG  
PETN. FOR RECONSIDERATION OF DA 91-987 FILED BY DAVID TILLOTSON,  
ATTORNEY  
09/23/91 DESIGN MEDIA, INC. WEG  
PETN. FOR STAY OF DA 91-987 FILED BY DAVID TILLOTSON, ATTORNEY  
DESIGN MEDIA, INC. WEG  
09/26/91 PETN. FOR STAY OF DA 91-987 FILED BY DAVID TILLOTSON, ATTORNEY  
DESIGN MEDIA, INC. WEG



ATTORNEY  
11/06/91 RELIANCE BROADCASTING, INC. WEG  
CONSOLIDATED OPPOSITION TO PETNS. FOR RECONSIDERATION FILED BY  
PATRICIA A. MAHONEY, ATTORNEY  
TERRY C. JENKS. WEG  
11/07/91 SUPPLEMENT AND ERRATA TO ITS "CONSOLIDATED OPPOSITION" FILED BY  
PATRICIA A. MAHONEY, ATTORNEY  
TERRY C. JENKS. WEG  
11/19/91 CONSOLIDATED REPLY TO OPPOSITIONS TO PETN. FOR RECONSIDERATION  
FILED BY DAVID TILLOTSON, ATTORNEY  
DESIGN MEDIA, INC. WEG  
11/19/91 CONSOLIDATED REPLY TO OPPOSITIONS TO REQUEST FOR INQUIRY  
FILED BY DAVID TILLOTSON, ATTORNEY  
DESIGN MEDIA, INC. WEG  
11/19/91 REQUEST FOR LEAVE TO FILE CONSOLIDATED REPLY FILED BY DAVID  
TILLOTSON, ATTORNEY  
DESIGN MEDIA, INC. WEG

**ATTACHMENT 3**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-227

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Eatonton, Fayetteville,  
Greenville, Griffin,  
Hogansville, Sparta and

RM-8070

RM-8072

266A; and the substitution of Channel 238A for Channel 237A at Ashland, Alabama, and the modification of Station WASZ(FM)'s license to specify Channel 238A (RM-8072). Orchon and petitioners each state an intention to apply for the respective channel, if allotted. Orchon's proposal to substitute Channel 239C3 for Channel 239A at Greenville and petitioner's proposal to substitute Channel 237A for Channel 239A at Greenville are mutually exclusive.

2. GMR and DMI seek to invoke the provisions of Section 1.420(i) of the Commission's Rules. GMR states that the use of Channel 249A at Sparta and Channel 249C3 at Eatonton is mutually exclusive. GMR notes that the reallocation of the channel from Sparta (population 1,710)<sup>1</sup> to Eatonton (population 4,737) will provide Eatonton with its first full-time local transmission service, while Sparta will continue to be served by Station WHAN(FM).<sup>2</sup> GMR states that Eatonton is an incorporated city with a mayor, city council, volunteer fire department, numerous busines-

can be reallocated to Eatonton with a site restriction of 8.6 kilometers (5.4 miles) northeast of the community,<sup>4</sup> in order to avoid a short-spacing to Station WFOX(FM), Channel 246C, Gainesville, Georgia, and to avoid a short-spacing to a construction permit for Station WKXK(FM), Channel 250C3, Fort Valley, Georgia. Channel 248C3 can be reallocated to Fayetteville with a site restriction of 2.7 kilometers (1.7 miles) southwest,<sup>5</sup> in order to avoid a short-spacing to Station WFOX(FM), Channel 246C, Gainesville, Georgia. Channel 239A can be allotted to Hogansville in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.5 kilometers (7.1 miles) southwest,<sup>6</sup> in order to avoid a short-spacing to Station WKLS, Channel 241C, Atlanta, Georgia. Channel 266A can be allotted to Thomaston in compliance with the Commission's minimum distance separation requirements with a site restriction 5.7 kilometers (3.5 miles) west,<sup>7</sup> in order to avoid a short-spacing to Station WPGA(FM), Channel 265A, Perry, Georgia, and Station WCJM(FM), Channel 265A, West Point, Georgia. Channel 238A can be allotted to Ashland in compliance with the Commission's minimum distance separation requirements at its currently licensed site.<sup>8</sup>

6. We believe the public interest would be served by seeking comments on these proposals. In order to make a determination as to which proposal would better serve the public interest, we shall provide the proponents an opportunity to demonstrate in comments why their respective proposals should be preferred. In this regard, the parties

respectively. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of the channels or require the petitioner's to demonstrate the availability of an additional equivalent class channel for use by such parties.

8. In recognition of the Commission's policy concerning the involuntary relocation of an authorized transmitter site, GMR and DMI have provided copies of agreements with T. Wood and Associates, Inc., permittee for Station WEIZ(FM) and WTGA, Radio Georgia, Inc., licensee of Station WTGA(FM) consenting to a change in their authorized transmitter sites, as well as the proposed change in channels of operation, to accommodate the modification of Stations WSKS(FM) and WOUL(FM). GMR and DMI has stated their willingness to reimburse the permittee of Station WEIZ(FM) and the licensee of WTGA(FM) for reasonable expenses incurred in relocating to Channel 239A and Channel 266A respectively.

9. We are also issuing *Show Cause Orders* to Orchon, the permittee of Station WEJG(FM), Greenville, and Perry Communications, Inc., licensee of Station WASZ, Ashland, seeking comments as to why each authorization should not be modified to specify operation on Channel 237A and Channel 238A, respectively. Whenever an existing licensee or permittee is ordered to switch channels in order to accommodate a new allotment, we require the proponent of the new allotment to make a commitment that it will reimburse the licensee or permittee for reasonable and prudent expenses incurred by the change of channels.

City	Present	Channel No.	Proposed
------	---------	-------------	----------

**OPTION I**

Greenville, Georgia	239A		239C3
---------------------	------	--	-------

**OPTION II**

Ashland, Alabama	237A		238A
Eatonton, Georgia	--		249C3
Fayetteville, Georgia	--		248C3
Greenville, Georgia	239A		237A
Griffin, Georgia	249A		--
Hogansville, Georgia	248A		239A
Sparta, Georgia	249A, 274A		274A
Thomaston, Georgia	237A		266A

12. IT IS ORDERED. That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Orchon Broadcasting Company, Inc., permittee of Station WEJG(FM), Channel 239A, Greenville, Georgia. SHALL SHOW CAUSE why its permit should not be modified to specify operation on Channel 237A in lieu of Channel 239A and Perry Communications, Inc., licensee of Station WASZ(FM), Channel 237A, Ashland, Alabama. SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 266A in lieu of Channel 237A.

13. Pursuant to Section 1.87 of the Commission's Rules, Orchon Broadcasting Company, Inc., and Perry Communications, Inc., may, not later than **December 14, 1992**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Orchon Broadcasting Company, Inc., or Perry Communications Inc., to furnish additional information. If Orchon Broadcasting Company, Inc. or Perry Communications, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Orchon Broadcasting Company, Inc., or Perry Communications, Inc., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

14. IT IS FURTHER ORDERED. That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Radio Georgia, Inc.  
Station WTGA(FM)  
208 S. Center St.  
Thomaston, GA 30286

T. Wood and  
Associates, Inc.  
Station WEIZ(FM)  
Box 1114  
LaGrange, GA 30240

WASZ  
Box 395  
Ashland, AL 36251

Orchon Broadcasting  
Company, Inc.  
219 Stonehaven Drive  
Newnan, GA 30265

15. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

16. Interested parties may file comments on or before **December 14, 1992**, and reply comments on or before **December 29, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Dan J. Alpert  
1250 Connecticut  
Ave., N.W.  
7th Floor  
Washington, D.C. 20036  
(Counsel for Good  
Medicine Radio,  
Georgia, Inc. and  
Design Media, Inc.)

Robert S. Stone  
McC Campbell &  
Young, P.C.  
2021 Plaza Tower  
Post Office Box 550  
Knoxville,  
Tennessee 37901-0550  
(Attorney for  
Orchon Broadcasting  
Company, Inc.)

17. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(h) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

18. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served

on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be

served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

**CERTIFICATE OF SERVICE**

I, Diane L. Roper, a secretary at the law firm of Fletcher, Heald & Hildreth, do hereby certify that true copies of the foregoing "Settlement Status Report and Joint Motion for Immediate Suspension of Procedural Dates" were sent this 4th day of June, 1993, by first-class United States mail, postage prepaid, to the following:

- \* The Honorable Richard L. Sippel  
Office of Administrative Law Judges  
Federal Communications Commission  
2000 L Street, N.W., Room 214  
Washington, D.C. 20554
- \* James Shook, Esquire  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554  
Counsel for the Mass Media Bureau

Audrey P. Rasmussen, Esquire  
O'Connor & Hannan  
1919 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, D.C. 20006  
Counsel for Steven L. Gradick

  
Diane L. Roper

\*By Hand Delivery